

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014050488

ORDER DENYING STUDENT'S
NOTICE OF INSUFFICIENCY

On May 9, 2014 Santa Monica-Malibu Unified School District (District) filed a Due Process Hearing Request¹ (complaint) naming Student. On May 16, 2014, Student's advocate timely filed on Student's behalf a Notice of Insufficiency (NOI) as to District's complaint. For the reasons discussed below, the NOI is denied.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

District’s complaint alleges that Student is nine years old, lives with his parents within District’s boundaries, and is eligible for special education under the eligibility categories of autistic-like characteristics and specific learning disability. District conducted numerous assessments in preparation for Student’s 2013 triennial individualized education program (IEP) team meeting, including an independent educational evaluation in occupational therapy. The IEP team met four times between November 18, 2013 and February 10, 2014. District offered Student placement and related services and supports, including a positive behavior support plan. Parents consented to implement the IEP but disputed that the IEP offered a free appropriate public education (FAPE), and informed District that they would seek an independent educational evaluation in three months to determine whether Student made any progress. District sent Parents prior written notice and filed for due process.

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

The complaint states the following issues:

1. Did District appropriately assess Student in all areas of suspected need, including psychoeducational, speech and language, adaptive physical education, and behavior, in preparation for his 2013 triennial IEP, such that District is not obligated to fund independent educational evaluations in some or all of those areas at public expense?
2. Did District's offer of placement and services, including a positive behavior support plan, in Student's December 17, 2013, February 3, 2014 and February 10, 2014 triennial IEP offer Student a FAPE in the least restrictive environment?

The facts in the complaint are sufficiently pleaded to put Student on notice of the claims forming the basis of the complaint and to permit Student to prepare for and participate in mediation and a due process hearing. District's complaint includes proposed resolutions seeking an order finding that District appropriately assessed Student and offered Student a FAPE. The proposed resolutions are also sufficiently pleaded. Accordingly the NOI is denied.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: May 16, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings